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IN THE

Supreme Court of The United States

October Term, 1973

No. 73-1717

WALTER E. FRITZ and
RAMONA J. FRITZ,

Petitioners,

v.

THE TOWN OF CLERMONT,

Respondent.

PETITIONERS' REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF INDIANA THIRD DISTRICT

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The Petitioners, Walter E. Fritz and Ramona J. Fritz, respectfully submit the following brief in reply to the Respondent's opposition to the Petitioners' request for a Writ of Certiorari to review the judgment of the Court of Appeals of Indiana.

The Petitioners take exception with various statements made by the Respondent Town in relating the facts and vigorously oppose the Town's position that the Petitioners failed to comply with United States Supreme Court Rule 23.1(f).

In support of this reply brief, the Petitioners show to the Court:

I.

The Petitioners did not attend or remonstrate to the hearing of January 18, 1968 for the reason that they did not receive notice of the meeting. The facts were uncontradicted that the Petitioners received no actual notice of the hearing even though the Town knew the Petitioners names and address. (*Fritz* v. *Board of Trustees of Town of Clermont* (1969) 252 NE 2d 567 at page 568)

The only notice given of this hearing was by publication and posting.

II.

The Respondent Town's statement that at the time of the trial the Petitioners' property was being developed as an apartment complex is erroneous.

III.

Contrary to the Town's allegations, the Petitioners did comply with United States Supreme Court Rule 23.1(f).

On January 20, 1970 the Petitioners explicitly showed in their remonstrance to the assessment that the Town sewer did not benefit them or their land within the meaning of the law because of the pre-existing sewer across their property. (Petition for Certiorari p. 4)

On January 27, 1970 the Petitioners filed their complaint in the County Court and again explicitly pointed out that their land did not receive any special benefits from the Town sewer and therefore their land should have been excluded from the local assessment. (Petition for Certiorari p. 5)

After the County Court affirmed the County assessment the Petitioners filed a Motion To Correct Errors and set forth the same charges and specifically said that the Petitioners rights under the Fourteenth Amendment of the United States Constitution were being violated. (Petition for Certiorari pp. 5-6)

Upon appeal to the Court of Appeals of Indiana the Petitioners raised the same questions as raised below. (Petition for Certiorari p. 6)

In the Petitioners' Statement of The Case the Petitioners show how the foregoing questions were passed upon by the Indiana Courts.

IV.

Contrary to the Respondent's position the Town never attempted to determine benefits. They simply spread the cost of the proposed sewer over the square footage of land within the Town and called the square footage cost a special benefit. This was the uncontradicted evidence of the Town's own witnesses—

During cross-examination the Town's engineer stated:

"Q. You took that square footage times a certain rate and that was the calculation, is that right?

A. That is right.

Q. What consideration did you give to any benefits, special benefits of any kind, not general benefits but special benefits?

A. I don't believe I understand you.

Q. Did you give any consideration at all in your calculations to any special benefits any of these landowners within the Town of Clermont, might have received or might not be received from the installation of these sewers?

A. No sir.

Q. In other words, your calculations were the square footage times the rate, period?

A. That is right.

Q. That was regardless of whether there was a sewer across their property already or not?

A. That is true."

On cross-examination a member of the Town Board related the following:

"Q. You assessed everybody the same way?

A. That is right.

Q. You took the square footage, took it times the calculation, and that was the assessment?

A. That is right.

Q. You made no determination as to benefits?

A. That is right."

There was no contrary testimony regarding benefits.

V.

The Town's sewer did not bisect all of the Petitioners' property as maintained by the Respondent Town. The

Town sewer entered from the northeast and eventually connected to the interceptor sewer.

CONCLUSION

The Petitioners again respectfully submit that a Writ of Certiorari should be issued to review the judgment of the Court of Appeals of Indiana, Third District.

In failing to exclude the land of the Petitioners and also in imposing the assessment upon their land without determining benefits, the Respondent Town acted arbitrarily, capriciously and deprived the Petitioners of their property without due process of law and just compensation.

Respectfully submitted,

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